



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

William C. Oldaker
Brad Litchfield
Oldaker, Biden & Belair, LLP
818 Connecticut Ave, NW, Suite 1100
Washington, DC 20006

JAN 3 0 2006

RE: MURs 5422 and 5680
Texans for Henry Cuellar
Congressional Campaign and
Rosendo Carranco, in his official
capacity as treasurer

Dear Mr. Oldaker and Mr. Litchfield:

On November 24, 2004 and September 12, 2005, in Matters Under Review designated as MUR 5422 and MUR 5680, the Federal Election Commission found that there was reason to believe that Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer ("the Respondents") in MUR 5422 had violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d); and in MUR 5680 had violated 2 U.S.C. § 434(b)(4). The Commission instituted an investigation in each of these matters. After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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Should you have any questions, please contact Peter G. Blumberg, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence H. Norton
General Counsel

Enclosure
Brief

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1
2 **BEFORE THE FEDERAL ELECTION COMMISSION**
3

4
5 In the Matter)
6)

7 Texans for Henry Cuellar Congressional Campaign)
8 and Rosendo Carranco,)
9 in his official capacity as treasurer)
10)

MUR 5422
MUR 5680

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12 **GENERAL COUNSEL'S BRIEF**
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16 **I. INTRODUCTION**

17 On November 24, 2004, the Commission found reason to believe that Texans for Henry
18 Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer
19 ("the Respondents" or "the Committee") violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d) in
20 MUR 5422 by failing to file a Schedule C-1 with its 12-Day Pre-Primary disclosure report
21 disclosing information on a bank loan. On September 12, 2005, the Commission found reason to
22 believe the Respondents violated 2 U.S.C. § 434(b)(4) in MUR 5680 by failing to disclose a
23 \$100,000 disbursement on the Committee's 12-Day Pre-General disclosure report.

24 The investigation, which included interviews with the Committee's campaign manager
25 and a vendor and discussions with the candidate and his attorneys, confirmed the underlying
26 facts relevant to the Commission's findings. This Office is now prepared to recommend that the
27 Commission find probable cause that Texans for Henry Cuellar Congressional Campaign and
28 Rosendo Carranco, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R.
29 § 104.3(d) and 2 U.S.C. § 434(b)(4).

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1 **II. DISCUSSION**

2 **A. Background**

3 The Committee registered with the Commission on October 9, 2003 as the authorized
4 campaign committee for Henry Cuellar, a candidate for the 2004 election for the House of
5 Representative from Texas's 28th Congressional District. Rosendo Carranco, a certified public
6 accountant, has been the treasurer of the Committee from the time of its organization to the
7 present.

8 **B. There is Probable Cause to Believe the Committee Violated 2 U.S.C. § 434(b)**
9 **and 11 C.F.R. § 104.3(d)(1) By Failing to Timely File a Schedule C-1 Disclosing**
10 **Loan Information**

11
12 On February 3, 2004, approximately one month prior to the primary election on March 9,
13 2004, Mr. Cuellar obtained a \$200,000 personal loan from the International Bank of Commerce
14 of Laredo, Texas. The proceeds of the loan were used to fund the Committee's expenditures.
15 The loan was reported on the Committee's 12-Day Pre-Primary Report Schedule C on February
16 26, 2004 as an unsecured loan with a November 30, 2004 due date. The next day, apparently
17 after receiving inquiries from interested individuals concerning the unsecured status of the loan,
18 the Committee filed an amendment to the Pre-Primary Report disclosing that the loan was in fact
19 secured. The Committee did not file a Schedule C-1 on either date disclosing detailed
20 information about the security interest that was pledged and copies of the loan agreement as
21 required by the Commission's regulations. 11 C.F.R. § 104.3(d).

22 A complaint was filed on March 5, 2004 alleging that the Committee failed to file a
23 Schedule C-1 for the \$200,000 loan and suggesting that the absence of public disclosure of the
24 detailed information required by the Schedule, such as the description of the collateral, the value
25 of the collateral, the repayment schedule, and a certification from the lender that the information

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1 about the loan set forth in the Schedule is accurate, raises questions as to whether the loan was
2 FECA-compliant. In the normal course of carrying out its duties, independent of the complaint,
3 the Commission's Reports Analysis Division ("RAD") sent a request for additional information
4 ("RFAI") to the Committee on March 16, 2004 inquiring about the missing Schedule C-1 and
5 loan documents, requesting a response by April 15, 2004. The Committee made no response to
6 this Commission inquiry within the 30-day period. An unsigned Schedule C-1 was filed
7 electronically on April 27, 2004, two months late and without the loan documents. The
8 Committee filed a signed paper copy of the Schedule C-1, along with loan documents, on May
9 10, 2004. Notably, the C-1 disclosed that the loan's due date was August 3, 2004, instead of the
10 previously reported November 30, 2004. Nevertheless, the rest of the information provided on
11 the C-1 established that the loan was secured and appeared to have been made in the ordinary
12 course of business.

13 The Committee continued to report the outstanding balance on the bank loan in
14 subsequent reports following the Pre-Primary Report, including on its 2004 October Quarterly
15 Report. On January 12, 2005 the Committee filed a Schedule C-1 reporting that the loan had
16 been restructured on August 3, 2004, an event that should have been reported on a Schedule C-1
17 with the first report due after the restructuring, the 2004 October Quarterly, but was not.

18 When a candidate receives a loan for use in connection with his or her campaign, the
19 candidate receives the loan as an agent of his or her authorized committee. 2 U.S.C.
20 § 432(e)(2); 11 C.F.R. §§ 101.2 and 102.7(d). Such loans are reportable by the committee and
21 itemizable as loans from the lender to the committee, rather than as loans from the candidate to
22 the committee. 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(a)(3)(vii)(B) and (a)(4)(iv).

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1 All loans received by a committee, including loans guaranteed by the candidate, must be reported
2 and continually itemized and reported until repaid. 2 U.S.C. § 434(b) and 11 C.F.R.
3 § 104.3(a)(4)(iv) and (d); 11 C.F.R. § 104.11. A committee that obtains a loan from a bank must
4 also file a Schedule C-1 with the first report due after a new loan or line of credit has been
5 established.¹ 11 C.F.R. § 104.3(d)(1). Since a Schedule C-1 has special signature requirements,
6 a committee filing its disclosure reports electronically must file the Schedule C-1 as a paper copy
7 with its electronic submission, or as a digitized version in a separate file in the electronic
8 submission, by the close of business on the prescribed filing date. 11 C.F.R. § 104.18(h)(2).
9 Committees must file a new Schedule C-1 each time a loan is restructured to change the terms of
10 payment. 11 C.F.R. § 104.3(d)(3)

11 The applicable statutes and regulations are clear that loans from lending institutions must
12 be reported with substantial specificity. In this case, the Committee initially reported the
13 existence of an unsecured bank loan, later claimed the loan was secured, but failed to provide
14 detailed information concerning the loan for over two months. As a result, significant details
15 concerning the loan, including how and whether it was collateralized and the terms of the
16 repayment, were not on the public record before the primary election. In fact, when the
17 information was finally disclosed several months later, the terms of the repayment set forth in the

¹ Schedule C-1 requires that the following information be disclosed: (1) the date and amount of the loan or line of credit; (2) the interest rate and repayment schedule of the loan, or each draw on the line of credit; (3) the types and value of traditional collateral or other sources of repayment securing the loan or line of credit and whether that security interest is perfected; and (4) an explanation of the basis of the credit established if the bases in (3) are not applicable. 11 C.F.R. § 104.3(d)(1)(i)-(iv). The committee treasurer must sign the schedule on Line G and attach a copy of the loan agreement. 11 C.F.R. § 104.3(d)(2). The lending institution must sign the statement on Line I, attesting that: the terms of the loan and other information regarding the extension of the loan are accurate, the terms and condition of the loan are no more favorable than those extended to similarly situated borrowers, the lending institution is aware that the loan must be made on a basis which assures repayment, and that in making the loan it has complied with the regulations set forth at 11 C.F.R. §§ 100.82(a)-(d) and 100.142(a)-(d).

1 Schedule C-1 differed from those initially reported on the Schedule C (e.g., different loan due
2 date).

3 Insofar as the detailed loan schedule was required and not filed timely both in February
4 2004 when the loan was received and in August 2004 when it was restructured, this Office is
5 prepared to recommend that the Commission find probable cause to believe that Texans for
6 Henry Cuellar Congressional Committee and Rosendo Carranco, in his official capacity as
7 treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d).

8 **C. There is Probable Cause to Believe the Committee Violated 2 U.S.C. § 434(b)(4)**
9 **By Failing to Disclose Disbursements**

10
11 On October 21, 2004, the Committee filed a 12-Day Pre-General Report, covering the
12 period October 1, 2004 to October 12, 2004, reporting total disbursements of \$78,570.11. The
13 Report was amended on January 12, 2005 to disclose an additional disbursement of \$100,000,
14 which increased the total reported disbursements to \$178,570.11. The additional disbursement,
15 which had been made to the Campaign Group, Inc. for media services on October 7, 2004,
16 represented a 127% increase in activity from the original report and represented 56% of the
17 Committee's disbursements for the period.

18 RAD sent an RFAI concerning the increase in financial activity on March 29, 2005. The
19 Committee missed several deadlines in responding to the original RFAI and the numerous
20 follow-up telephone calls placed by RAD. On July 7, 2005, the Committee filed a Miscellaneous
21 Report explaining that the Committee employee responsible for filing reports had overlooked the
22 payment because it had been made by wire transfer, rather than by check. The filing stated that
23 the Committee "caught the omission through an audit of [its] bank account" which occurred after
24 the general election.

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1 The treasurer of a political committee must file reports of all receipts and disbursements
2 in accordance with the Act. 2 U.S.C. § 434(a)(1). A committee is required to file a pre-election
3 report no later than the 12th day before any election in which the candidate is seeking election;
4 the report must include transactions that occurred as of the 20th day before the election. 2 U.S.C.
5 § 434(a)(2)(A)(i). The report shall disclose, *inter alia*, the total amount of disbursements, and an
6 itemization of all disbursements, including expenditures made to meet the candidate's or
7 committee's operating expenses. 2 U.S.C. § 434(b)(4)(b); 11 C.F.R. § 104.3(b)(2)(i).

8 The Committee did not comply with reporting requirements when it failed to disclose the
9 \$100,000 operating expenditure on the original 2004 12-Day Pre-Primary Report filed on
10 October 21, 2004. The omission meant that the public lost the benefit of viewing a significant
11 amount (56%) of the Committee's total disbursements for the period before the general election.
12 The earliest amendment to the report was filed several months later, in January 2005, after the
13 election. *See* 2 U.S.C. § 434(b)(4); *see also* 11 C.F.R. § 104.3(b)(2)(i).

14 Accordingly, this Office is prepared to recommend that the Commission find probable
15 cause to believe that Texans for Henry Cuellar Congressional Committee and Rosendo Carranco,
16 in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(4).

17 **III. RECOMMENDATIONS**

18 **MUR 5422**

- 19 1. Find probable cause that Texans for Henry Cuellar Congressional Campaign and
20 Rosendo Carranco, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11
21 C.F.R. § 104.3(d).

22 **MUR 5680**

- 23 2. Find probable cause that Texans for Henry Cuellar Congressional Campaign and
24 Rosendo Carranco, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(4).

1/27/06
Date

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